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IN THE DRAWINGS

In response to the December 12, 2005 Office Action, Applicant submits herewith two sheets of replacement drawings for FIGURES 2 and 3 in compliance with 37 C.F.R. §1.121(d).

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REMARKS

Claims 1-24 were originally filed in the present application.

Claims 1, 3-9, 11-17 and 19-24 are pending in the present application.

Claims 1, 3-9, 11-17 and 19-24 were rejected in the December 12, 2005 Office Action.

FIGURES 2 and 3 were deemed noncompliant in the December 12, 2005 Office Action.

Claims 2, 10 and 18 were previously cancelled.

No claims have been allowed.

Reconsideration of the claims is respectfully requested.

In Sections 3-7 of the December 12, 2005 Office Action, the Examiner responded to Applicant's previous arguments. Although the Examiner refers to the Applicant's response dated April 25, 2005, Applicant will presume that the Examiner has indeed reviewed Applicant's response dated October 12, 2005. Applicant respectfully traverses the Examiner's response and directs the Examiner to the arguments below in support of its traversal.

In Section 8 of the December 12, 2005 Office Action, the Examiner deemed FIGURES 2 and 3 of the present application non-compliant with 37 C.F.R. §1.121(d). Applicant has submitted with this Response two replacement drawing sheets for FIGURES 2 and 3 in compliance with 37 C.F.R. §1.121(d). Applicant respectfully requests favorable reconsideration for FIGURES 2 and 3.

In Sections 9 and 10 of the December 12, 2005 Office Action, the Examiner rejected Claims 1, 3-9, 11-17 and 19-24 under 35 U.S.C. §103(a) as being unpatentable over an article entitled: "Performance evaluation of TCP/RLP protocol stack over the CDMA wireless link" by *Bao* (the

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“Bao reference”) in view of an article entitled: “Wireless Device Configuration (OTASP/OTAPA) via ACAP” by *Gellens* (the “*Gellens* reference”) in further view of U.S. Patent No. 5,241,598 to *Raith* (the “*Raith* reference”) and U.S. Patent No. 6,609,148 to *Salo, et al.* (the “*Salo* reference”). Applicant respectfully disagrees.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP §2142, p. 2100-133 (8th ed. rev. 3 August 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *Id.*

The Office has not established a *prima facie* case of obviousness. The independent claims of the present application, Claims 1, 9 and 17, are generally directed to the transmission of a software program, a software correction patch and/or a provisioning data from a server associated with a wireless network. The claims of the present application require, for example, a mobile station having an RF transceiver which generally receives and converts wireless messages to a plurality of

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Internet Protocol (IP) packets. In accordance with the claims of the present application, the mobile station also requires an encryption controller that decrypts the IP packets and a data burst message protocol controller that converts the decrypted IP packets to at least one data burst message. The four cited references in support of the §103 rejection, whether taken alone or in any combination, fail to disclose, teach or suggest all of the required elements of Claims 1, 9 and 17.

The first of four references cited in support of the §103 rejection, the Bao reference, explores the very basics of the dynamics between the Transmission Control Protocol (TCP) layer (typically used in wireline networks) and the Radio Link Protocol (RLP) layer (typically used wireless networks). Specifically, the Bao reference concludes that the TCP and RLP layers must be carefully chosen due to fluctuations in overall wireless system performance. The Bao reference, p. 236. The Bao reference provides a narrow (and very general) guideline in predicting TCP/RLP performances in wireless communication environments where, for example, the Frame Error Rate (FER) is significantly higher than those found in typical wireline communication environments. *Id.* at 229. While the Bao reference discloses certain discrete elements of the independent claims of the present application, the Bao reference teaches very little (if anything) related to the claims of the present application. For example, the Bao reference does not disclose, teach or suggest, *inter alia*: (1) a multi-base station environment; (2) transmitting a software program, a software correction patch and/or a provisioning data to a mobile station from a server associated with a wireless network; (3) an encryption controller; and (4) a data burst message protocol controller, as required by the independent claims of the present application.

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On the other hand, the second prior art reference included in support of the §103 rejection, the Gellens reference, narrowly focuses on an Over the Air Service Provisioning (OTASP) and Over the Air Parameter Administration (OTAPA) via IS-707 using the Application Configuration Access Protocol (ACAP). OTASP allows a wireless service subscriber to activate new wireless services, make changes to an existing service without the intervention of a third party, establish a user profile and program ("over the air") a Number Assignment Module (NAM), an International Mobile Station Identity (IMSI) and any roaming lists. The Gellens reference, p. 6. OTASP also allows for authentication key generation and storage. OTAPA, on the other hand, allows a wireless service provider the ability to update NAM, data option parameters, other service provider or manufacturer specific parameters and roaming lists. *Id.* Importantly, the Gellens reference teaches that the OTASP and OTAPA specifically require that the CDMA carrier have an IS-707 data services capable network, either a Packet Data Service (IS-707.5) or Quick-Net-Connect (QNC). *Id.* at 9.

While the Gellens reference discloses certain discrete elements of the independent claims of the present application, the Gellens reference does not disclose (as the Examiner seems to suggest), teach or suggest, *inter alia*, a mobile station having an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to at least one of IP Sec tunneling protocol; Secure Shell (SSH) tunneling protocol; Secure Sockets Layer/Transport Layer Security (SSL/TLS); and point-to-point tunneling protocol (PPTP), as required by the independent claims of the present application. Moreover, although the Gellens reference indicates that end-to-end encryption "should be considered as a future enhancement" and "is still needed," it does not disclose

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any specific means for doing so, nor does it suggest any possible means for doing so. Yet, the Examiner relies on the Gellens reference to suggests that one of ordinary skill in the art would be motivated to include a particular encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to at least one of IP Sec tunneling protocol; Secure Shell (SSH) tunneling protocol; Secure Sockets Layer/Transport Layer Security (SSL/TLS); and point-to-point tunneling protocol (PPTP), as required by the independent claims of the present application.

The third reference cited in support of the §103 rejection, the Raith reference, is included by the Examiner *solely* for teaching multiple cells in a cellular radio communication, where a mobile station communicates with a plurality of base stations to enable a mobile station to communicate from multiple cells. Applicant agrees that the Raith reference indeed discloses a multi-cell system, as the Examiner suggests. The Raith reference, however, teaches a narrowly tailored system that resynchronizes rolling keys used as input among a plurality of inputs to an authentication algorithm executed in a mobile station and in a radio network providing service to the mobile station. The Raith reference, column 7, lines 37-42. Moreover, the Raith reference fails to teach *any* other required elements of the independent claims of the present application.

Finally, the fourth reference cited in support of the §103 rejection, the Salo reference, is included by the Examiner *solely* for teaching the use of the IP Sec tunneling protocol. The Salo reference does indeed reference using the IP Sec tunneling protocol. The Salo reference, column 13, lines 7-19. The Salo reference, however, is narrowly directed to a computer system comprising a

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plurality of components, including a data network, an enterprise gateway server, a remote gateway server and a messaging server in which an enterprise server software converts a plurality of data requests for messaging and collaboration data into a single higher level request. *Id.* at column 3, line 60 - column 4, line 5. There is no suggestion or motivation *within* the Salo reference of a *mobile station* comprising an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to at least one of IP Sec tunneling protocol; Secure Shell (SSH) tunneling protocol; Secure Sockets Layer/Transport Layer Security (SSL/TLS); and point-to-point tunneling protocol (PPTP), as required by the independent claims of the present application.

In short, the Examiner suggests that one skilled in the art would: (1) First, *seek out* the Bao reference which primarily seeks to evaluate the performance of TCP/RLP protocol stacks over wireless links; (2) Second, *seek out* the Gellens reference directed specifically to OTASP and OTAPA via IS-707 using ACAP; (3) Third, *seek out* still another reference, the Raith reference, directed to how rolling keys are used as input among a plurality of inputs in an authentication algorithm executed in a mobile station and the radio network which services that mobile station; and (4) Finally, *seek out* the Salo reference directed to enterprise server software that converts a plurality of data requests for messaging and collaboration data into a single higher level request. The Examiner has arbitrarily cited four references in support of the §103 rejection by selecting discrete elements from each and *prospectively* combining these discrete elements (and *seeking out* still others) as required by the independent claims of the present application. Claims 1, 9 and 17 and its dependents contain unique and non-obvious limitations over the art cited and are thus allowable.

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Applicant therefore respectfully requests favorable reconsideration and the withdrawal of the §103 rejection to Claims 1, 3-9, 11-17 and 19-24.

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SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at jmockler@davismunck.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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